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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,336	11/20/2003	James Rimsa	0343-0030	9254
7590 07/19/2007				
Stephen B. Heller		EXAMINER		
Cook, Alex, McFarron, Manzo,		GREENHUT, CHARLES N		
Cummings & Mehler, Ltd.				
200 West Adams Street - #2850		ART UNIT PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/718,336	Applicant(s) RIMSA ET AL.	
	Examiner Charles N. Greenhut	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,6,15,18,20,21,23 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,6,15,18,20,21,23 and 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

I. Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/16/07 has been entered.

II. Claim Objections

1. Claims 18, 20, 21 and 23, recite in preamble, "the refuse receptacle lifter of claim [32/35]" where parent claims 32 and 35 are directed toward a vehicle not a receptacle lifter.

III. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2-3, 6, 15, 18, 20-21, 23 and 31-35, is/are rejected under 35 U.S.C. 103(a) as being unpatentable over UPDIKE (US 3,762,586 A) in view of SZINTE (US 5,833,428 A).
 - 1.1. With respect to claim 31, and 33, UPDIKE discloses a vehicle (10) adapted to carry a collection container (42), lift forks (36), and lifter assembly (54), having a lifter (74), for engaging and inverting refuse receptacles (146), transporter adapted to be mounted at the front of the vehicle (12), including a carrier (68) supporting the lifter (74) movable laterally between an extended position extending substantially beyond a side of the vehicle (10) and to a retracted dumping position in proximity to the

collection container (42), the transporter comprising a lifter support (56) movably attached to the carrier (68) for moving between a stored position generally adjacent to the front of the vehicle (36) substantially between the lift forks (36) and an operating position spaced forwardly of the vehicle (10) and laterally of the collection container (42), the lifter support (56) positioned generally adjacent to the carrier (68) in the stored position and generally forwardly from the carrier (68) in the operating position. UPDIKE employs an articulated boom to carry the lifter as opposed to the well-known rectilinearly translating carrier, shown, for example, in SZINTE. SZINTE teaches the transporter comprising a base (112) and elongated beam (114) moving linearly. It would have been obvious to one having ordinary skill in the art to modify UPDIKE with the transporter of SZINTE in order to collect and dump the refuse receptacles.

- 1.2. With respect to claim 32, and 34-35, UPDIKE discloses a refuse collection vehicle (10) having a front end (12) rear (16) sides, and cavity (14), lift forks (36), lifter assembly carried at the front end (12), having a lifter (74) for engaging lifting and inverting a refuse receptacle (146) into (Col. 5 Li. 10) a collection container (42), and a transporter including a carrier supporting the lifter (74) movable laterally between a pickup position extending substantially beyond a side of the vehicle (10) and to a retracted position in proximity to the collection container (42), the carrier comprising a fixed member (62) mounted to the front of the vehicle (12), and a laterally movable member (60) to which the lifter (74) is secured, a hydraulic cylinder (64) associated with the fixed (62) and laterally movable member (60), a lifter support (56) pivotally

attached to the carrier (at 60), for moving between a stored position adjacent to the front of the vehicle (12) and an operating position spaced forwardly of the vehicle and laterally of the collection container (42), the lifter may be used to engage, lift and dump the contents of a curbside refuse receptacle (146) into (Col. 5 Li. 10) a collection container (42). UPDIKE employs an articulated boom to carry the lifter as opposed to the well-known rectilinearly translating carrier, shown, for example, in SZINTE. SZINTE teaches the transporter comprising a base (112) and elongated beam (114) moving linearly. It would have been obvious to one having ordinary skill in the art to modify UPDIKE with the transporter of SZINTE in order to collect and dump the refuse receptacles.

- 1.3. With respect to claim 2-3, 6, 15, 18, 20-21, and 23, UPDIKE additionally discloses an elongated tubular housing member (62) fixedly mounted to the vehicle (10), a sliding member (62) received therein, to which the lifter (74) is secured, a hydraulic cylinder (64) interposed therebetween, the lifter support (56) comprising a pair of spaced apart horizontally oriented beams (e.g., sidewalls) having an inboard (58) end pivotally secured to the carrier (60) and outboard (70) end secured to the lifter (74), a hydraulic cylinder (66) interposed between the lifter support (56) and the carrier (60) for moving between stored and operating positions.

IV. Response to Applicant's Arguments

Applicant's arguments entered 5/16/07 have been fully considered.

1. Applicant argues that claims 32, 33, 34, and 35, as amended, are not rendered obvious by UPDIKE in view of SZINTE because the proposed combination would not teach the

limitation of a “stored position generally adjacent to the front end of the vehicle substantially between the lift forks.” This argument is not persuasive. The Examiner acknowledges the distinction between the storage position shown in the cited art and the storage position shown in Applicant’s preferred embodiment. However, since the storage position of UPDIKE may properly be considered a “position generally adjacent to the front end of the vehicle substantially between the lift forks” within the broadest reasonable interpretation of that term, the combination of UPDIKE in view of SZINTE meets the limitation. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Applicant supports this assertion by arguing SZINTE can never attain a comparable position. That assertion is not on point since the SZINTE lifter is not required to meet the claim limitations merely the mounting structure securing to the vehicle. The limitation is already met by UPDIKE since the UPDIKE apparatus is capable of obtaining a storage position generally adjacent to the front of the vehicle between the lift forks (e.g., fig 1). Applicant is also reminded that, while claim terms may be defined in terms of function, in a claim directed toward an apparatus, a recitation of the function or intended use of the claimed invention must result in a *structural difference* between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.


V. Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.

Art Unit: 3652

2. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER